

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

**PERMIT FOR DIVERSION AND USE OF WATER**

PERMIT 21059

Application 29878 of      **Victor S. Trione and Mark H. Trione**  
                                 **P.O. Box NN**  
                                 **Santa Rosa, CA 95402**

filed on **December 17, 1990**, has been approved by the State Water Resources Control Board (SWRCB)  
**SUBJECT TO PRIOR RIGHTS** and to the limitations and conditions of this permit.

**Permittee is hereby authorized to divert and use water as follows:**

1.    Source of water

Source

Unnamed Stream (1, 2, 3, & 4)

Tributary to

Benmore Creek thence

South Fork Scotts Creek thence

Scotts Creek thence

Clear Lake thence

Cache Creek thence

Yolo Bypass thence

Sacramento River

within the County of **Lake**

2.    Location of point of diversion

By California Coordinate System in Zone 2	40-acre subdivision of public land survey or projection thereof	Section (Projected)	Township	Range	Base and Meridian
1. East Lake; North 490,450 feet and East 1,713,475 feet	SE¼ of SE¼	01	13 N	11 W	MD
2. West Lake; North 489,900 feet and East 1,710,350 feet	SE¼ of SW¼	01	13 N	11 W	MD
3. Rec Lake; North 489,900 feet and East 1,709,300 feet	SW¼ of SW¼	01	13 N	11 W	MD
4. North Lake North 491,600 feet and East 1,708,775 feet	NW¼ of SW¼	01	13 N	11 W	MD

3. PURPOSE OF USE	4. PLACE OF USE	SECTION	TOWNSHIP	RANGE	BASE AND MERIDIAN	ACRES
Fire Protection						
Recreation	At Reservoirs 1. East Lake: SE 1/4 OF SE 1/4 AND NW 1/4 OF NW 1/4; 2. West Lake: SE 1/4 OF SW 1/4 AND NE 1/4 OF NW 1/4; 3. Rec Lake: SW 1/4 OF SW 1/4; and 4. North Lake: NW 1/4 OF SW 1/4	1	13N	11W	MD	
Frost Protection						
Irrigation	A net area of 180 acres within a gross area of 243 acres located within the following 1/4 1/4ers by Section:					
	NE 1/4 OF SE 1/4	1	13N	11W	MD	1
	NW 1/4 OF SE 1/4	1	13N	11W	MD	17
	SE 1/4 OF SE 1/4	1	13N	11W	MD	25
	SW 1/4 OF SE 1/4	1	13N	11W	MD	25
	NE 1/4 OF SW 1/4	1	13N	11W	MD	31
	NW 1/4 OF SW 1/4	1	13N	11W	MD	8
	SE 1/4 OF SW 1/4	1	13N	11W	MD	16
	SE 1/4 OF NW 1/4	1	13N	11W	MD	2
	SW 1/4 OF NW 1/4	1	13N	11W	MD	21
	NE 1/4 OF SE 1/4	2	13N	11W	MD	1
	NE 1/4 OF NE 1/4	2	13N	11W	MD	27
	NW 1/4 OF NE 1/4	2	13N	11W	MD	8
	SE 1/4 OF NE 1/4	2	13N	11W	MD	11
	NE 1/4 OF NE 1/4	12	13N	11W	MD	21
	NW 1/4 OF NE 1/4	12	13N	11W	MD	10
	SE 1/4 OF NE 1/4	12	13N	11W	MD	5
	SW 1/4 OF NE 1/4	12	13N	11W	MD	2
	NE 1/4 OF NW 1/4	12	13N	11W	MD	5
	SE 1/4 OF NW 1/4	12	13N	11W	MD	6
	SW 1/4 OF NW 1/4	5	13N	10W	MD	1
					Total	243

The place of use is shown on map on file with the SWRCB.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of 19.1 acre-feet per annum to be collected from November 1 of each year to March 31 of the succeeding year as follows: 9.9 acre-feet per annum in East Lake Reservoir, 4.7 acre-feet per annum in West Lake Reservoir, and 4.5 acre-feet per annum in North Lake Reservoir.  
(0000005D)

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.  
(0000005I)

6. Complete application of the water to the authorized use shall be made by December 31, 2010.  
(0000009)

7. The SWRCB reserves jurisdiction to impose conditions to conform this permit to SWRCB policy on use of water for frost protection. Action by the SWRCB will be taken only after notice to interested parties and opportunity for hearing.  
(0000020)

8. Permittee shall comply with the following provisions which are derived from the agreement between permittee and Yolo County Flood Control and Water Conservation District executed on October 1, 1991 and filed with the State Water Resources Control Board:

- (a) This permit is subject to the prior rights of the Yolo County Flood Control and Water Conservation District to store water in Clear Lake as set forth in the Gopevic Decree. During years that Clear Lake does not fill to an elevation of 7.56 feet on the Rumsey Gage, no diversion is allowed unless permittee purchases exchange water from the District.
- (b) Permittee shall install and properly maintain in the reservoir a staff gage, satisfactory to the State Water Resources Control Board, for the purpose of determining water levels in the reservoir.
- (c) Permittee shall record the staff gage reading on or about March 31 and November 1 of each year.
- (d) Such readings shall be supplied to: (a) the State Water Resources Control Board with the next progress report submitted to the Board by the permittee; and (b) the Yolo County Flood Control and Water Conservation District on April 30 of each year.

- (e) Permittee shall allow Yolo County Flood Control and Water Conservation District and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

Inclusion in this permit of certain provisions of the referenced agreement shall not be construed as disapproval of other provisions of the agreement or as affecting the enforceability, as between the parties, of such other provisions insofar as they are not inconsistent with the terms of this permit.

(0000024)

9. The total quantity of water diverted under this permit, together with that diverted under the permit issued pursuant to Application 27934 and Application 29879, and shall not exceed 146.1 AFA.

(0000114a)

10. Permittee shall maintain the existing outlet pipe for East Lake, West Lake, North Lake, and Rec Lake in proper working order.

(000000S)

11. For the protection of fish and wildlife habitat, the permittee shall, as long as water is diverted pursuant to any permit or license issued pursuant to Applications 29878 and 29879,:

- (a) Manage the Benmore Creek corridor as a natural riparian corridor. Allow willows and other natural streamside vegetation to form a mature riparian canopy. Streambed clearing shall be limited to the hand removal of downed wood that blocks natural streamflow. Buffer zones shall be provided along the riparian corridor; the buffer zones may be mowed but shall not be plowed.
- (b) Erosion control/soil stability programs shall be continued. If any shrubs or trees are used as part of these programs, the plants shall be chosen from among those species native to the Benmore Valley and surrounding area.

(0400500)

12. For the protection and enhancement of wildlife habitat, the permittee shall, as long as water is diverted pursuant to any permit or license issued pursuant to Applications 29878 and 29879, develop three wildlife watering sites on the northeastern side of Benmore Valley, as follows:

- (a) Install and maintain year-round, a wildlife drinker at the following location: the sixth major drainage on the eastern side of the valley, counting northwesterly from the entrance gate on the south end of the valley.
- (b) To create a permanent pond, excavate the catchment basin located three drainages north of the wildlife drinker site. Water will be delivered as necessary to keep the pond full. Wetland vegetation shall be allowed to develop without hindrance.

- (c) Enhance and enlarge the seep in an ephemeral creek with a rock outcropping just south of the northernmost property line. The seep is in the basin located at the foot of the rock outcropping; water flows on the surface for approximately 15 feet above the rock outcropping before it disappears.

(0040500)

13. Department of Fish and Game representatives shall, upon request by the Department, be given reasonable access to the property in order to determine compliance with the fish and wildlife habitat protection and the wildlife habitat enhancement and protection special terms. This term shall remain in effect as long as water is diverted pursuant to any permit or license issued pursuant to Applications 29878 and 29879.

(0400502)

14. The prehistoric sites identified as Vimark-1, -2 (the portion of the site north of Benmore Creek), -4, and -5 in the report titled, "A Cultural Resources Inventory for Water Right Applications 29878 and 29879, Benmore Valley, Lake County, California"; prepared by Vicki Beard of Tom Origer & Associates, shall continue to be cultivated with general vineyard maintenance activities occurring. No ripping or grading shall be allowed on the areas identified as archeological sites. Techniques for removal of vines, in the areas of the sites to be replanted, shall also be restricted to using mechanical non-invasive techniques (e.g., pulling the vines with a chain attached to a backhoe, rather than excavation of vines). The portion of the site identified as Vimark-3, which has been impacted by the location of a road, shall be maintained with imported (offsite) gravel or soil placed over the area of the road. The remainder of the site, as delineated by a qualified archeologist, shall be fenced to prevent project-related impacts.

(0380503)

15. The prehistoric sites identified as Vimark-2 (the portion of the site south of Benmore Creek), -7 and -8 in the report titled, "A Cultural Resources Inventory for Water Right Applications 29878 and 29879, Benmore Valley, Lake County, California"; prepared by Vicki Beard of Tom Origer & Associates, shall not be impacted by any developments related to the water diversion, storage and distribution facilities, or the installation and maintenance of vineyards identified as within the Place of Use for Applications 29878 and 29879. A qualified archeologist shall identify, delineate, and mark the boundaries of these sites for the placement of appropriate fencing. The permittee shall fence these areas, as delineated, in order to insure avoidance of any impacts to these cultural resources. Ongoing weed control shall be permitted, including mowing and disking. However, there is to be no grading, ripping or trenching in these areas. Future developments at these locations may be permitted, either if the sites are determined not to be eligible for inclusion in the California Register of Historic Resources; or appropriate mitigation measures, to be recommended by a qualified archeologist and approved by the Chief of the Division of Water Rights, are completed.

16. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic and metal objects; milled and split lumber; old trails; and structure and feature remains such as building foundations and dumps. The Chief of the Division of Water Rights shall be notified of the discovery, and a professional archeologist shall be retained by the applicant to evaluate the find and recommend appropriate mitigation. Project related activities in the area of the find shall resume only after the completion of the recommended mitigation, as approved by the Chief of the Division of Water Rights. (0380504)

**ALL PERMITS ISSUED BY THE STATE WATER RESOURCES CONTROL BOARD ARE SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:**

- A. Permittee shall maintain records of the amount of water diverted and used to enable SWRCB to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.
- B. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- C. Progress reports shall be submitted promptly by permittee when requested by the SWRCB until a license is issued.
- D. Permittee shall allow representatives of the SWRCB and other parties, as may be authorized from time to time by said SWRCB, reasonable access to project works to determine compliance with the terms of this permit.
- E. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the SWRCB may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate

agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

F. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the SWRCB if, after notice to the permittee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

G. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

***This permit is issued and permittee takes it subject to the following provisions of the Water Code:***

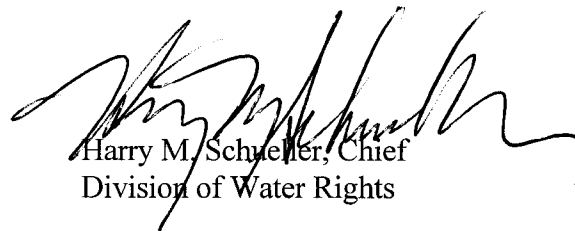
*Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.*

*Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.*

*Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).*

Dated: **SEP 1 2000**

STATE WATER RESOURCES CONTROL BOARD



Harry M. Schueller, Chief  
Division of Water Rights